

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re)	Chapter 11
)	
W. R. GRACE & CO., et al.)	Case No. 01-1139 (JKF)
)	Jointly Administered
Debtors.)	
)	Re: Docket No.: 22491

**CERTIFICATION OF COUNSEL RE: ORDER BETWEEN
THE PLAN PROPONENTS AND LIBBY CLAIMANTS REGARDING
INDIVIDUAL CLAIMANT TESTIMONY**

1. On July 17, 2009, Arrowood Indemnity Co. filed *Arrowood's Motion for Relief Against the Libby Claimants Based on Their Designation of Over 100 Witnesses for the Confirmation Hearing* (Docket No. 22491) with the United States Bankruptcy Court for the District of Delaware (the "Court"), 824 Market Street, Wilmington, Delaware 19801. The Court heard oral objections from the Libby Claimants at the July 27, 2009 hearing.

2. The Court heard arguments on the motion (the "Motion") on July 27, 2009, and as a result of its ruling, requested that the parties prepare an order reflecting its ruling.

3. After conferring on August 4, 2009, the Debtors circulated a proposal to the Libby Claimants and Plan Proponents on August 5, 2009 addressing various outstanding Libby related pre-trial and discovery issues, including those addressed in the Motion. Subsequently, on August 7, 10-11, 2009, the parties exchanged ideas and agreed upon an order with respect to various pretrial issues. That agreed order has been separately submitted to the Court. The parties also have reached agreement on paragraphs 1-8 of the attached order regarding the remaining issues involving Libby individual claimant witnesses.

4. The parties were not able to reach an agreement on one remaining issue, which is set forth in paragraph 9 of the attached proposed order. This paragraph would require

the Libby Claimants to identify the names of individuals and produce documents relating to the settled claims of these individuals, only in the event that the Libby Claimants intend to offer proof at trial, other than the value of the settlement, of the facts and circumstances related to any individual claimant's settled claim.

As the Court may recall, the Debtors have objected to testimony related to individual claimants' settlements as not relevant to issues related to the Confirmation, and the Debtors will continue to advance that position at trial. The current order is an attempt to ensure that if such evidence is admitted at trial, that the Plan Proponents have an opportunity to know what the evidence will be and are afforded an opportunity to be prepared to respond to it. Paragraph 9, which the Libby Claimants have not agreed to, merely requires the Libby Claimants to give notice, and discovery, of any individual settlement they plan to proffer as evidence, and only if the evidence they plan to put on relates to something other than value. This issue is at the heart and soul of the Arrowood motion regarding the individual Libby Claimant testimony and is the reason the Plan Proponents joined that motion. *See* Docket No. 22491. There are hundreds of possible Libby Claimant settlements and thousands of non-Libby settlements the Libby Claimants could choose to address in their case. The Plan Proponents should not be left in the dark as to which of those settlements, if any, the Libby Claimants intend to offer as evidence.

5. Accordingly, the Plan Proponents request that the Court enter the attached proposed order, Exhibit A, as submitted herein on the papers or by an expedited telephonic hearing to be set as soon as possible.

Dated: August 11, 2009

Respectfully submitted,

KIRKLAND & ELLIS LLP
David M. Bernick, P.C.
Theodore L. Freedman
Citigroup Center
153 East 53rd Street
New York, New York 10022
(212) 446-4800

Barbara M. Harding
Brian T. Stansbury
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5200

-and-

THE LAW OFFICES OF JANET S. BAER P.C.
Janet S Baer P.C.
70 W. Madison St., Suite 2100
Chicago, IL 60602
(312) 641-2162

-and-

PACHULSKI, STANG, ZIEHL, & JONES LLP

/s/ Kathleen P. Makowski
Laura Davis Jones (#2436)
James E. O'Neill (#4042)
Kathleen P. Makowski (#3648)
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and Debtors in
Possession